

ADMINISTRATIVE DISQUALIFICATION HEARINGS VIRGINIA DEPARTMENT OF SOCIAL SERVICES

Administrative Disqualification Hearing (ADH) means an impartial review by a hearing officer of an individual's action involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation.

Intentional Program Violation (IPV) means any action by an individual for the purpose of establishing or maintaining the family's eligibility for **TANF** or for increasing or preventing a reduction in the amount of the grant which is intentionally a false or misleading statement or misrepresentation, concealment or withholding of facts or any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

Intentional Program Violation (IPV) means any action by an individual who intentionally made a false or misleading statement to the local agency, either orally or in writing, to obtain benefits to which the household is not entitled; concealed information or withheld facts to obtain benefits to which the household is not entitled; or committed any act that constitutes a violation of the **Food Stamp** Act, Food Stamp Regulations, or any state statutes relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or authorization to participate cards.

A. General Duties of the Local Agency

Before referring a case for ADH, a local agency has a duty to:

- ensure and document that a clear and full explanation is given to the applicant or recipient of the eligibility requirements for the type of assistance he is requesting or receiving;
- ensure and document that the applicant or recipient has been advised of his responsibility to give complete and accurate information related to his eligibility and to report promptly and fully any changes in his circumstances;
- ensure and document that the applicant or recipient has been advised of the provisions of the law with respect to giving false information knowingly or deliberately withholding information that would affect his eligibility for assistance or the amount of assistance; and
- ensure that the worker has fully explained what types of changes in circumstances would have an effect on the grant.

B. Evidence/Standard of Proof

- In order for a local agency to request an ADH, there must be clear and convincing evidence which demonstrates the individual committed or intended to commit an IPV.
 1. Failure on the part of an individual to report income or other household changes is not enough, standing alone, to establish clear and convincing evidence of an IPV.
 2. The agency must prove by clear and convincing evidence that there was a program violation and that the program violation was committed with the intent to defraud the program. A program violation without proven intent to defraud does not amount to an IPV. Failure to report income or

ownership of some asset is not enough to demonstrate fraud.

3. The agency carries the burden of proof to establish an IPV.
- "Clear and convincing" proof is defined as proof which results in reasonable certainty of the truth of the ultimate fact in controversy. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable. Black's Law Dictionary 251 (6TH ED. 1990).
 - Examples of evidence to establish an IPV include:
 1. Written verification of unreported income or resources received by the individual;
 2. Verification that the individual understands his reporting responsibilities by signature on the application/redetermination form or some other form;
 3. An application, monthly report or change report submitted during the period the IPV is alleged to have occurred that omits the information in question; and
 4. Documented contacts with the individual during the period the IPV is alleged to have occurred in which the individual failed to report the information in question.

C. Local Agency Referral

- The local agency shall request an ADH be scheduled by submitting a written request to the Appeals & Fair Hearings Unit, Benefits & Services Section, Department of Social Services, Theater Row Building, 730 East Broad Street, Richmond, Virginia 23219-1849.

- The request must include the following information:
 1. Identifying information;
 2. Summary of the allegation or allegations;
 3. Summary of the evidence;
 4. Copies of documents supporting the allegation or allegations;
 5. Documentation that the individual was provided a waiver and refused to sign the waiver;
 6. The referral must be signed and dated by the supervisor or local agency director.

D. Notice/Waiver of Notice

- In an ADH hearing involving a **TANF** program issue, the hearing officer will schedule a date for the ADH and provide written notice to the individual at least 30 days in advance of the date the ADH has been scheduled.
- In an ADH hearing involving a **Food Stamp** program issue, the hearing officer will schedule a date for the ADH and provide written notice to the individual at least 30 days in advance of the date the ADH has been scheduled.
 1. If proof of receipt of the advance notification of the ADH or refusal to accept the notice have been received, the requirement to notify the individual alleged to have committed the IPV has been met.
 2. Without sufficient evidence that the advance notification was received or refused, the ADH is not to be held.
- The notice in both TANF and Food Stamp program ADHs will contain:
 1. The date, time and place of the hearing;
 2. The charge(s) against the individual;

3. A summary of the evidence, and how and where the evidence can be examined;
4. A warning that the decision will be based solely on information provided by the agency if the individual fails to appear at the hearing;
5. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
6. A warning that a determination of IPV will result in disqualification periods as prescribed by law and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;
7. A listing of the individual's rights as set forth below;
8. A statement that the hearing does not preclude the State or Federal government from prosecuting the individual for the IPV in a civil or criminal court action, or from collecting any overissuance(s); and
9. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

E. Location of Hearing

- The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing the IPV.

F. Postponement

- The individual suspected of committing the IPV, or the individual's representative, may request a postponement of the ADH if the request for postponement is made at

least 10 days in advance of the date of the scheduled hearing.

- A TANF ADH may not be postponed for more than a total of 30 days.
- The hearing officer may limit the number of postponements.

G. Failure to Appear

- The ADH can be held even if the individual or the individual's representative cannot be located or fails to appear without good cause.
- The individual has 10 days after the date of the scheduled ADH to present reasons indicating good cause for failure to appear.
- In Food Stamp Program ADHs, where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the individual has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear.
- If the individual is found to have committed an IPV, but a hearing officer later determines that there was good cause for not appearing, the previous decision is no longer valid and a new ADH shall be conducted.
- The hearing officer who conducted the original hearing may conduct the new hearing.
- The hearing officer shall enter the good cause decision into the hearing record.

H. Participation

- A pending ADH shall not affect the individual's right to participate in the Food Stamp Program or TANF Program.
- The local agency may not disqualify an individual until the hearing officer finds that the individual has committed an IPV.

- This does not, however, preclude the local agency from reducing, suspending or terminating assistance for other reasons.

I. The Hearing

- Even if the individual is not present at the hearing, the hearing officer shall carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.
- Only persons directly concerned with the issue attend the ADH; this normally means a representative of the local agency and the individual alleged to have committed the IPV.

J. Duties of the Hearing Officer

- The hearing officer shall:
 1. Identify those present for the record;
 2. Advise the individual that he may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charge or charges may be used against him in a court of law;
 3. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of the individual to appeal the hearing officer's decision to circuit court;
 4. Consider all relevant issues. Even if the individual is not present, the hearing officer is to carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence;
 5. Request, receive and make part of the record all evidence determined necessary to render a decision;
 6. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

7. Advise the local agency to obtain a medical assessment at local agency expense if the hearing officer considers it necessary in a TANF ADH.
8. Within 90 days of the date the individual is notified in writing that an ADH has been scheduled, the hearing officer shall conduct the hearing, arrive at a decision and notify the individual and local agency of the decision.

K. Opportunities of the Individual

- The individual alleged to have committed an IPV shall be given adequate opportunity to:
 1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local agency to establish the alleged IPV, shall be made available;
 2. Present his own case or have it presented by legal counsel or another person;
 3. Bring witnesses;
 4. Advance arguments without any undue influence;
 5. Question or refute any testimony or evidence, including the opportunity to confront and examine witnesses; and
 6. Submit evidence to establish all pertinent facts and circumstances in the case.

L. The Decision

- The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the facts as presented in the hearing.

- The hearing officer must substantiate his decision by identifying supporting evidence and applicable regulations.
- The hearing officer shall prepare a written report of the hearing, which shall include findings, conclusions, decisions, and appropriate recommendations.
- The decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent regulations and respond to reasoned arguments made by the individual or the individual's representative.

M. Notification of Decision

- The hearing officer shall notify the individual of the decision in writing and of the individual's right to appeal the hearing officer's decision to the appropriate circuit court.
- If the individual is found guilty of committing an IPV, the written decision shall advise the individual that disqualification shall occur.

N. Reversal

- No further administrative appeal procedure exists after an adverse ADH.
- The determination of IPV made by a hearing officer cannot be reversed by a subsequent fair hearing decision.
- The individual, however, is entitled to seek relief in a court having appropriate jurisdiction.